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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,269	03/26/2004	Matthew B. Porter	61340	1615

24230 7590 01/21/2005

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OTTAWA, KS 66067

EXAMINER
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CHENEVERT, PAUL A

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/811,269

**Applicant(s)**

PORTER, MATTHEW B.

**Examiner**

Paul A. Chenevert

**Art Unit**

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 1,8 and 15 is/are rejected.
- 7) ☒ Claim(s) 2-7 and 9-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2004 03 26</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because the application has been filed with informal drawings.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informalities:
- a. Page 5, line 14, "18" should be changed to "20".
  - b. Page 7, lines 21, 23, 25, & 26 and page 8, lines 1 & 16, "proximal end 18" should be changed to "distal end 18".
  - c. Page 16 (Abstract), line 3, "having proximal and distal ends coupled with the axle." Should be changed to "having a proximal end coupled with the axle and also having a distal end."
- Appropriate correction is required.

***Claim Objections***

4. Claims 9-13 are objected to because of the following informalities:
- a. Claim 9, line 11, "elastic member" should be changed to "elastic backing member".
  - b. Claim 12 should depend from claim 11 in stead of claim 9 since the cover strips are introduced in claim 11 and do not appear in claim 9.
- Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 3612

3. Claims 8 & 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 8 recites the limitation "exterior cover" on line 2. There is insufficient antecedent basis for this limitation in the claim. The cover (16) is described in the specification as containing three layers: an opaque water resilient layer of flexible aligned cover strips; a middle elastic layer; and a layer of aligned padded strips. It is unclear how a cover is claimed to include a cover. It is thought that a more descriptive term should be employed to claim the "outer cover" such as "flexible strips" or that the claim 8 is simply canceled to remove all confusion.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fasiska et al. in view of Eglinton.

Fasiska et al. disclose a retractable vehicle cover apparatus for selectively covering a vehicle having sides, the apparatus comprising: an elongated housing (10) presenting side wall structure (surface between end portion 11 and end cap 15) and having an elongated aperture (slot 24) presenting a length defined through the wall structure; an axle (rotatable spool, column 2,

Art Unit: 3612

line 62) disposed within the housing for rotational movement about a central axis; and an elongated cover (4) having a first end and a second end coupled with the axle, the cover being selectively movable between an extended position where a substantial portion of the cover extends from the housing and a retracted position where the cover is substantially wrapped around the axle; wherein the cover includes opposed edges defining a width.

However, Fasiska et al. do not expressly disclose that the cover includes adjustment means for permitting selective adjustment of the width of the cover between a rest condition where the width of the cover is substantially the same as the length of the aperture and an expanded condition where the cover is expanded to cover a portion of the sides of the vehicle.

Eglinton discloses a retractable vehicle cover apparatus comprising: an elongated housing (10) presenting side wall structure (surface between end portions) and having an elongated aperture (slot 13) presenting a length defined through the wall structure; an axle (ratchet wheel 18) disposed within the housing for rotational movement about a central axis; and an elongated cover (web 12 of cover material) having a first end and a second end coupled with the axle, the cover being selectively movable between an extended position where a substantial portion of the cover extends from the housing and a retracted position where the cover is substantially wrapped around the axle; wherein the cover includes opposed edges defining a width, the cover including adjustment means (series of transversely extending elastically-extensible strips 29) for permitting selective adjustment of the width of the cover between a rest condition where the width of the cover is substantially the same as the length of the aperture and an expanded condition where the cover is expanded to cover a load either on a roof rack or in the back of a truck bed.

Art Unit: 3612

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the retractable vehicle cover apparatus of Fasiska et al., to employ the adjustment means, as taught by Eglinton.

The suggestion/motivation for doing so would have been to ensure that the cover would neatly fold up prior to storage, as is desired in this vehicle invention.

Therefore, it would have been a desirable and thus a prima facie obvious modification of the retractable vehicle cover apparatus of Fasiska et al. by combining adjustment means with the cover to obtain the invention as specified in claim 1, as taught by the prior references' motivation, and not hindsight from the applicants disclosure.

*Allowable Subject Matter*

4. Claims 2-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 9-13 would be allowable if rewritten to overcome the objection(s) set forth in this Office action.
6. Claims 14 & 16-19 are allowed.
7. The following is an examiner's statement of reasons for allowance: the prior art does not show or make obvious Applicant's padding strips or the biased elastic member extending between the edges of the cover.

Art Unit: 3612

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

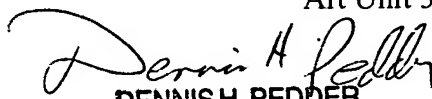
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is 703-305-0837. The examiner can normally be reached on Mon-Fri (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul A. Chenevert  
Examiner  
Art Unit 3612

PAC  
12JAN05

  
DENNISH. PEDDER  
PRIMARY EXAMINER

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1/14/05